Approved For Release 2001/09/03 : CIA-RDP84-00709R000400070252-3
OGC Has Reviewed

Asst. Chief, Fiscal Division

Office of the General Counsel

12 November 1948

[redacted]

STATINTL

1. Your memorandum of 4 November 1948 forwarded the file on Government Bill of Lading No. XG-627 and requested advice on the appropriate action to be taken. There is no need to repeat the facts which are clearly presented in your memorandum.

2. The [redacted] is apparently unaware that a Government Bill of Lading - rather than their regular commercial shipping receipt - was used. Hence they have attempted to apply their Standard Limitation of Liability. Reserving the question of whether such a limitation could be applicable to the Government even if accepted, the carrier here has no recourse to a provision not contained within the boundaries of the agreement. To forestall a possible argument that condition No. 2 of the Government Bill of Lading would incorporate the terms of the carrier's standard commercial form unless specifically excepted (as in Condition No. 7), attention is directed to the decision of the Comptroller General in 19 Comp. Gen. 537. He cited the judicial conflict that existed in regard to the sovereign authority of the Government and the power of its agents to restrict or bargain away certain advantages demanded by public policy. Among these advantages was the freedom of the Government from the usual time limitations for filing claims. The Standard Government Bill of Lading now contains a provision (Condition No. 7) that in case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipment shall not apply as to the period within which notice shall be given, claim made, or suit instituted. Even in the absence of this provision, however, the Comptroller felt that the Government was not subject to the usual commercial limitations, and the deletion of the condition could not being the limitations into operation. In the present situation, the reason is even more compelling for preserving the Government's freedom from a commercial restriction which would limit the liability of the

STATINTL

STATINTL

Approved For Release 2001/09/03 : CIA-RDP84-00709R000400070252-3

carrier without regard to liquidated damages. The contracting officer has not agreed to such limitation by using the commercial form and it is not felt that the Government is subjected to the restriction by implication.

3. The above opinion is provided primarily for your reference in event the carrier raises the argument suggested. Since he is apparently under the impression that the usual commercial express receipt was used, it is suggested that you call his attention to the fact that a Government Bill of Lading was employed, and that it contained no limitation of damages. In the meantime, it appears proper to continue to withhold from current unpaid carrier bills an amount sufficient to cover the damage, - or, of course, accept a payment in the amount of the total damages.

STATINTL

[redacted]

General Counsel: [redacted]

STATINTL